



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/783,987	02/19/2004	Gregory B. Altshuler	105090-230	4359

21125 7590 07/14/2008
NUTTER MCCLENNEN & FISH LLP
WORLD TRADE CENTER WEST
155 SEAPORT BOULEVARD
BOSTON, MA 02210-2604

EXAMINER

SHAY, DAVID M

ART UNIT	PAPER NUMBER
----------	--------------

3735

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

07/14/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket@nutter.com

Office Action Summary	Application No. 10/783,987	Applicant(s) ALTSHULER ET AL.	
	Examiner david shay	Art Unit 3735	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on March 31, 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-14, 16-21, 24-41, 43-54 and 56-69 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-14, 16-21, 24-41, 43-54 and 56-69 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>March 31, 2008</u> | 6) <input type="checkbox"/> Other: _____ |

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The drawings are objected to because Figures 1, 2, 3a, and 3b photocopies of photographs, wherein significant detail is indistinct; in Figures 7a, 7b, 7c, and 8-13 there is poor shading and none of the elements therein are labeled with indicia indicative of their function. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing

Art Unit: 3735

should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

With regard to the art rejections, applicant argues that Altshuler et al does not disclose a method for preventing, reducing, or treating pseudofolliculitis barbae (PFB) in a skin treatment area. The examiner must respectfully note that as Altshuler et al teach the precise treatment parameters disclosed and claimed, such application to the skin will provide the claimed treatment to any hairs present, regardless of the knowledge or intent of Altshuler et al. Thus this argument is not convincing.

Applicant argues that Azar et al does not disclose a method for preventing, reducing, or treating pseudofolliculitis barbae (PFB) in a skin treatment area, noting tha Azar et al teach a hair removal method. The examiner must respectfully note that as Azar et al teach the precise treatment parameters disclosed and claimed (note column 7, lines 11-20, disclosing the use of a flashlamp, which will produce wavelengths in the claimed range), such application to the skin will provide the claimed treatment to any hairs present, regardless of the knowledge or intent of Azar et al. Thus this argument is not convincing.

Applicant argues that McDaniel does not disclose a method for preventing, reducing, or treating pseudofolliculitis barbae (PFB) in a skin treatment area. The examiner must respectfully note that as McDaniel teach the precise treatment parameters disclosed and claimed, such application to the skin will provide the claimed treatment to any hairs present, regardless of the knowledge or intent of McDaniel. Thus this argument is not convincing.

Claims 38, 44-46, 49-53, 58, and 59 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Altshuler et al.

Claims 10-14, 16-19, 21, 24-28, 32, 36-39, and 43 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Azar et al.

Azar et al employ applicant's disclosed parameters and thus inherently will produce the variously claimed results. If the method of Azar et al does not produce these results, either applicant's claims are incomplete, or the disclosure is fatally defective.

Claims 38-41, 44-50, and 60-69 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by McDaniel.

The wavelengths disclosed by McDaniel are "in a range of about 380 nm to about 600 nm". McDaniel employs applicant's disclosed parameters and thus inherently will produce the variously claimed results. If the method of McDaniel does not produce these results, either applicant's claims are incomplete, or the disclosure is fatally defective.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10-24, 29-37, 51-54, and 56-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Altshuler et al in combination with McDaniel. Altshuler et al teach a device and method as claimed except for the particular pulse widths and fluences. McDaniel teach treating hair using pulse widths and fluences within the claimed range. It would have been obvious to the artisan or ordinary skill to employ the pulse widths and fluences of McDaniel in the device and method of Altshuler et al, since Altshuler et al make it clear that a vast array of combinations of parameters can be used as long as they are related in the ways defined therein, or alternatively, to employ the parameter interrelations taught by Altshuler et al in the device and method of McDaniel, since the parameter interrelations of Altshuler et al are useful for providing hair treatment, thus producing a device and method such as claimed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to david shay whose telephone number is (571) 272-4773. The examiner can normally be reached on Tuesday through Friday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II, can be reached on Monday, Tuesday, Wednesday, Thursday, and Friday. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

Art Unit: 3735

system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/david shay/
Primary Examiner, Art Unit 3735